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Administration of justice at the United Nations

Letter dated 27 October 2008 from the President of the General Assembly to the Chairman of the Fifth Committee

I have the honour to transmit herewith a letter from the Chairman of the Sixth Committee dated 24 October 2008 with regard to agenda item 129 (see annex).

(*Signed*) Miguel **d'Escoto Brockmann**

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Annex

Letter dated 24 October 2008 from the Chairman of the Sixth Committee to the President of the General Assembly

I have the honour to write to you with regard to agenda item 129, "Administration of justice at the United Nations".

As you are aware, at its 2nd plenary meeting, on 19 September 2008, the General Assembly decided to allocate this item to the Fifth Committee and to the Sixth Committee pursuant to its resolution 62/228 and its decision 62/519.

During the present session, the Sixth Committee has considered this item in plenary at its 1st and 15th meetings, on 6 and 24 October 2008, as well as in the form of a working group. The Sixth Committee has adopted the text of the draft statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal (with bracketed unagreed text) (see enclosures 1 and 2).

I should draw your attention to certain specific issues relating to the text of the draft statutes, as adopted by the Sixth Committee.

With respect to the persons that may file applications to the Dispute Tribunal (see article 3, paragraph 1, of the draft statute of the Dispute Tribunal), the Sixth Committee has included possible options in appendix II to the draft statute of the Dispute Tribunal.

The Sixth Committee has further considered that a number of matters relating to the draft statutes should be decided by the General Assembly following the recommendation of the Fifth Committee. The Sixth Committee has included, either in footnotes to the draft statutes or in appendixes thereto, observations on the legal aspects of such matters. These matters are the following:

(a) The question of whether the Dispute Tribunal shall be competent to hear and pass judgement on an application by a staff association to enforce its rights as recognized under the Staff Regulations and Rules (see articles 2, paragraph 3, and 3, paragraph 3, of the draft statute of the Dispute Tribunal);

(b) Arrangements concerning the transition of cases filed before 1 January 2009 from the current system of administration of justice to the new system (see articles 2, paragraph 7, and 8, paragraph 7, of the draft statute of the Dispute Tribunal and appendix I thereto);

(c) The question of whether former judges should be eligible, and if so after what period, for subsequent appointments within the United Nations (see article 4, paragraph 6, of the draft statute of the Dispute Tribunal and article 3, paragraph 6, of the draft statute of the Appeals Tribunal);

(d) The question of the extent to which the Dispute Tribunal should have the power to order compensation, interest and costs (see article 10, paragraphs 5 (b), (c) and (d) and 6, of the draft statute of the Dispute Tribunal and article 9, paragraphs 1 (b), (c) and (d) and 2, of the draft statute of the Appeals Tribunal);

(e) The question of whether applications alleging non-observance of the regulations of the Pension Fund and applications filed against a specialized agency should be considered by the Dispute Tribunal (see article 2, paragraphs 9 and 10,

and article 7, paragraph 2, of the draft statute of the Appeals Tribunal and articles 2, paragraph 1 (a), and 6, paragraph 4, of the draft statute of the Dispute Tribunal);

(f) The question of whether the Appeals Tribunal may decide to grant compensation for procedural delay when it remands a case to the Dispute Tribunal (see article 9, paragraph 5, of the draft statute of the Appeals Tribunal).

Finally, the Sixth Committee has decided to recommend that the resolution by which the General Assembly will adopt the statutes of the Dispute Tribunal and the Appeals Tribunal should contain a paragraph drafted as follows: "*Affirms* that the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall not have any powers beyond those conferred under their respective statutes". The Sixth Committee further recommends that the resolution include language providing for a review of the statutes of the Tribunals by the General Assembly, after the entry into force, in the light of the experience gained with the operation of the new system of administration of justice.

It would be appreciated if the present letter, together with its enclosures, containing the draft statutes of the Dispute Tribunal and the Appeals Tribunal, could be brought to the attention of the Fifth Committee and be circulated as a document of the General Assembly under agenda item 129.

(*Signed*) Hamid **Al Bayati**
Chairman of the Sixth Committee

Enclosure 1

Draft statute of the United Nations Dispute Tribunal

Text proposed by the Working Group on Administration of Justice at the United Nations

Article 1

A tribunal is established by the present statute as the first instance of the two-tier formal system of administration of justice, to be known as the United Nations Dispute Tribunal.

Article 2

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided in article 3, paragraph 1, of the present statute, against the Secretary-General, as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The words "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-observance **[, including the staff pension regulations]**;[1]

(b) To appeal an administrative decision imposing a disciplinary measure;

(c) To enforce the implementation of an agreement reached through mediation pursuant to article 8, paragraph 2, of the present statute.

2. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by **[a staff member]**[2] requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The Dispute Tribunal's decision on such an application shall not be subject to appeal.

[3. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by a staff association, as provided in article 3, paragraph 3, of the present statute, against the United Nations or separately administered United Nations funds and programmes to enforce the rights of staff associations, as recognized under the Staff Regulations and Rules.][3]

4. The Dispute Tribunal shall be competent to permit or deny leave to an application to file a friend-of-the-court brief by a staff association.

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[1] See article 2, paragraph 9, of the statute of the Appeals Tribunal and the note thereto.

[2] See article 3, paragraph 1 (d), below and the note thereto.

[3] A proposal was made to delete this paragraph. For consideration by the Fifth Committee.

5. The Tribunal shall be competent to permit **[a staff member]**[4] who is entitled to appeal the same administrative decision under article 2, paragraph 1 (a), to intervene in a matter brought by another staff member under article 2, paragraph 1 (a).

6. In the event of a dispute as to whether the Dispute Tribunal has competence under the present statute, the Tribunal shall decide on the matter.

[7. As a transitional measure, the Dispute Tribunal shall have jurisdiction over: (a) a case transferred to it on 1 January 2009 from a joint appeals board or a joint disciplinary committee established by the United Nations or from another similar body established by a separately administered fund or programme; and (b) an application filed with the United Nations Administrative Tribunal before 1 January 2009, that has not been reviewed by the Administrative Tribunal as of 31 December 2008.][5]

Article 3

1. An application under article 2, paragraph 1, of the present statute may be filed by:

(a) Any staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes;

(b) Any former staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes;

(c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes.

[(d) Any person performing work by way of his or her own personal service for the United Nations Secretariat or separately administered United Nations funds and programmes, no matter the type of contract by which he or she is engaged, with the exception of persons in the following categories:

(i) Military or police personnel in peacekeeping operations;

(ii) Volunteers (other than United Nations Volunteers);

(iii) Interns;

(iv) Type II gratis personnel (personnel provided to the United Nations by a Government or other entity responsible for the remuneration of the services of such personnel and who do not serve under any other established regime); or

(v) Persons performing work in conjunction with the supply of goods or services extending beyond their own personal service or pursuant to a contract entered into with a supplier, contractor or consulting firm.][6]

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[4] See article 3, paragraph 1 (d), below and the note thereto.

[5] Owing to the budgetary implications of the transitional measures, delegations had requested that options be developed to guide future discussions on this issue; see options paper in appendix I.

[6] See options paper in appendix II.

2. A request for a suspension of action under article 2, paragraph 2, of the present statute may be filed by an individual, as provided in article 3, paragraph 1, of the present statute.

[3. An application under article 2, paragraph 3, of the present statute may be filed by a staff association recognized under United Nations staff regulation 8.1 (b).][7]

Article 4

1. The Dispute Tribunal shall be composed of three full-time judges and two half-time judges.

2. The judges shall be elected by the General Assembly on the recommendation of the Internal Justice Council in accordance with General Assembly resolution 62/228. No two judges shall be of the same nationality. Due regard shall be given to geographical distribution and gender balance.

3. To be eligible for appointment as a judge, a person shall:

(a) Be of high moral character; and

(b) Possess at least 10 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.

4. A judge of the Dispute Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, two of the judges (one full-time judge and one half-time judge) initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Dispute Tribunal for a further non-renewable term of seven years. A current or former judge of the Appeals Tribunal shall not be eligible to serve in the Dispute Tribunal.

5. A judge of the Dispute Tribunal appointed to replace a judge whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed for one non-renewable term of seven years, provided that the unexpired term is less than three years.

[6. A former judge of the Dispute Tribunal shall not be eligible for any subsequent appointment within the United Nations, except another judicial post.][8]

7. The Dispute Tribunal shall elect a President.

8. A judge of the Dispute Tribunal shall serve in his or her personal capacity and enjoy full independence.

9. A judge of the Dispute Tribunal who has, or appears to have, a conflict of interest shall recuse himself or herself from the case. Where a party requests such recusal, the decision shall be taken by the President of the Tribunal.

10. A judge of the Dispute Tribunal may only be removed by the General Assembly in case of misconduct or incapacity.

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[7] See article 2, paragraph 3, above and the note thereto.

[8] A proposal was made for a former judge to be eligible, after a certain period, for a post for which the selection and election and/or appointment is the prerogative of the United Nations Secretary-General. However, there were differing views on how long that ineligibility period should be. See also article 3, paragraph 6, of the statute of the Appeals Tribunal.

11. A judge of the Dispute Tribunal may resign, by notifying the General Assembly through the Secretary-General. The resignation shall take effect from the date of notification, unless the notice of resignation specifies a later date.

Article 5

The three full-time judges of the Dispute Tribunal shall normally perform their functions in New York, Geneva and Nairobi, respectively. The Dispute Tribunal may decide to hold sessions in other duty stations, as required by the caseload.

Article 6

1. The Secretary-General of the United Nations shall make the administrative arrangements necessary for the functioning of the Dispute Tribunal, including provisions for the travel and related costs of staff whose physical presence before the Tribunal is deemed necessary by the Tribunal and for judges to travel as necessary to hold sessions at other duty stations.

2. The Registries of the Dispute Tribunal shall be established in New York, Geneva and Nairobi, each consisting of a Registrar and such other staff, as necessary.

3. The expenses of the Dispute Tribunal shall be borne by the United Nations.

4. Compensation ordered by the Dispute Tribunal shall be paid by the United Nations Secretariat or separately administered United Nations funds and programmes, as applicable and appropriate **[or, by the specialized agency, organization or entity that has accepted the jurisdiction of the Dispute Tribunal].**[9]

Article 7

1. Subject to the provisions of the present statute, the Dispute Tribunal shall establish its own rules of procedure, which shall be subject to approval by the General Assembly.

2. The rules shall include provisions concerning:

(a) Organization of work;

(b) Presentation of submissions and the procedure to be followed in respect thereto;

(c) Procedures for maintaining the confidentiality and inadmissibility of verbal or written statements made during the mediation process;

(d) Intervention by persons not party to the case whose rights may be affected by the judgement;

(e) Oral hearings;

(f) Publication of judgements;

(g) Functions of the Registries;

(h) Procedure for summary dismissal;

[9] See article 2, paragraphs 9 and 10, of the statute of the Appeals Tribunal and the note thereto.

(i) Evidentiary procedure;

(j) Suspension of contested administrative decisions;

(k) Procedure for the recusal of judges;

(l) Other matters relating to the functioning of the Dispute Tribunal.

Article 8

1. An application shall be receivable if:

(a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;

(b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and

(d) The application is filed within the following applicable deadline:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days after the applicant's receipt of the response by management to his or her submission; or

b. Within 90 calendar days after the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;

(ii) In cases where a management evaluation of the contested decision is not required, within 90 calendar days after the applicant's receipt of the administrative decision;

(iii) The deadline provided for in subparagraphs (i) and (ii) above shall be extended to one year if the application is filed by any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes;

(iv) Where the parties have sought mediation of their dispute within the deadline for the filing of an application under article 8, paragraph 1 (d), but did not reach an agreement, the application shall be receivable if filed within 90 calendar days after the mediation has broken down in accordance with the procedures laid down in the terms of reference of the Mediation Division.

2. An application shall not be receivable if the dispute arising from the contested administrative decision had been resolved by an agreement reached through mediation. However, an applicant may file an application to enforce the implementation of an agreement reached through mediation, which shall be receivable if the agreement has not been implemented and the application is filed within 90 days after the last day for the implementation as specified in the

mediation agreement or, when the mediation agreement is silent on the matter, after the thirtieth day from the date of the signing of the agreement.

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

4. Notwithstanding article 8, paragraph 3, an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision.

5. The filing of an application shall not have the effect of suspending the implementation of the contested administrative decision.

6. An application and other submissions shall be filed in any of the official languages of the United Nations.

[7. As a transitional measure, a case transferred on 1 January 2009 pursuant to article 2, paragraph 7, of the present statute must also satisfy deadlines for transitional measures applicable to such cases to be provided separately by an administrative issuance.][10]

Article 9

1. The Dispute Tribunal may order production of documents or such other evidence as it deems necessary.

2. The Dispute Tribunal shall decide whether the personal appearance of the applicant or any other person is required at oral proceedings and the appropriate means for satisfying the requirement of personal appearance.

3. The oral proceedings of the Dispute Tribunal shall be held in public unless the Dispute Tribunal decides, at its own initiative or at the request of either party, that exceptional circumstances require the proceedings to be closed.

Article 10

1. The Dispute Tribunal may suspend proceedings in a case at the request of the parties for a time to be specified by it in writing.

2. At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

3. At any time during the deliberations, the Dispute Tribunal may propose to refer the case to mediation. With the consent of the parties, it shall suspend the proceedings for a time to be specified by it. If a mediation agreement is not reached

[10] Needed only if cases are transferred to the Dispute Tribunal; see article 2, paragraph 7, above and the note thereto.

within this period of time, the Dispute Tribunal shall continue with its proceedings unless the parties request otherwise.

4. Prior to a determination of the merits of a case, should the Dispute Tribunal find that a relevant procedure prescribed in the Staff Regulations and Rules or applicable administrative issuances has not been observed, the Dispute Tribunal may, with the concurrence of the Secretary-General, remand the case for institution or correction of the required procedure, which, in any case, should not exceed three months. In such cases, the Dispute Tribunal may order the payment of compensation for procedural delay to the applicant for such loss as may have been caused by such procedural delay, which is not to exceed the equivalent of three months' net base salary.

5. As part of its judgement, the Dispute Tribunal may order one or more of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b);

[(b) Compensation, which shall not normally exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, order the payment of a higher indemnity in exceptional cases and shall provide the reasons for that decision;

(c) Interest; or

(d) Costs.][11]

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[11] While the outstanding issues contained in article 10 of the statute of the Dispute Tribunal and article 9 of the statute of the Appeals Tribunal relate to financial matters that will be addressed by the Fifth Committee, they also give rise to important legal considerations relating to access to justice, equality of arms and the adequacy of remedies.

It is important to strike a balance between these legal considerations, on the one hand, and, on the other hand, incentives and disincentives for filing and prolonging frivolous suits, the likelihood of informal resolution of disputes, and the efficiency and even-handedness of the process, in addition to the financial implications for the new system. In striking this balance, consideration should also be given to the role of the Office of Staff Legal Assistance, in particular the scope of assistance offered.

During the consultation there was support of the text as proposed by the Secretariat. It was also proposed to amend subparagraph (b) (to introduce a cap of three years' net base salary on compensation) and to delete the provisions concerning interests and costs.

The Secretariat's proposal on compensation builds upon the current system, in which a cap exists on compensation (2 years' net base salary) but provides that in exceptional circumstances that cap can be raised. This is provided in article 10 of the current statute of the United Nations Administrative Tribunal. Regarding interest and costs, it was noted that these would be new elements under the new system of administration of justice, but, under certain circumstances, are awarded by international administrative tribunals.

Delegations recommended that these considerations be taken into account when the final decision on article 10 of the statute of the Dispute Tribunal and 9 of the statute of the Appeals Tribunal is taken.

[6. Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before the Tribunal, it may award costs against that party.][12]

7. The Dispute Tribunal shall not award exemplary or punitive damages.

8. The Dispute Tribunal may refer appropriate cases to the Secretary-General or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.

9. Cases before the Dispute Tribunal shall normally be considered by a single judge. However, the President of the Appeals Tribunal may, within seven calendar days of a written request by the President of the Dispute Tribunal, authorize the referral of a case to a panel of three judges of the Dispute Tribunal when necessary by reason of the particular complexity or importance of the case. Cases referred to a panel of three judges shall be decided by a majority vote.

Article 11

1. The judgements of the Dispute Tribunal shall be issued in writing and shall state the reasons, facts and law on which they are based.

2. The deliberations of the Dispute Tribunal shall be confidential.

3. The judgement of the Dispute Tribunal shall be binding upon the parties, but is subject to appeal in accordance with the statute of the Appeals Tribunal. In the absence of such appeal, it shall be executable following the expiry of the time provided for appeal in the statute of the Appeals Tribunal.

4. The judgements of the Dispute Tribunal shall be drawn up in any of the six official languages of the United Nations, in two originals, which shall be deposited in the archives of the United Nations.

5. A copy of the judgement shall be communicated to each party in the case. The applicant shall receive a copy in the language in which the application was submitted unless he or she requests a copy in another of the official languages of the United Nations.

6. The judgements of the Dispute Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal.

Article 12

1. Either party may apply to the Dispute Tribunal for a revision of an executable judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Dispute Tribunal and to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement.

2. Clerical or arithmetical mistakes, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Dispute Tribunal, either on its own motion or on the application of any of the parties.

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[12] See article 10, paragraph 5, above and the note thereto.

3. Either party may apply to the Dispute Tribunal for an interpretation of the meaning or the scope of the final judgement, provided that it is not under consideration by the Appeals Tribunal.

4. Once a judgement is executable under article 11, paragraph 3, of the present statute, either party may apply to the Dispute Tribunal for an order for execution of the judgement if the judgement requires execution within a certain period of time and such execution has not been carried out.

Article 13

The present statute may be amended by decision of the General Assembly.

Appendix I

Transition to the new formal system of administration of justice (article 2, paragraph 7, of the draft statute of the United Nations Dispute Tribunal)

Options for further consideration by the Fifth Committee

Based on the expectation that on 31 December 2008 not all cases filed under the current system of administration of justice will have been resolved, the statute of the United Nations Dispute Tribunal must contain provisions on the transition to the new formal system (i.e., provisions on the eventual transfer of cases having arisen before that date to the jurisdiction of the Dispute Tribunal).

As the number of unresolved cases on 31 December 2008[a] depends on the capacity of, and resources being made available for that purpose to, the existing structures to finalize cases filed in 2008, the Sixth Committee submits to the Fifth Committee the considerations and options presented below.

1. The Sixth Committee is of the view that any arrangement concerning the transition of cases arising before 1 January 2009 from the current system of administration of justice to the new formal system should take into account the need to reduce, as much as possible and feasible, any overlap between the two systems, while at the same time ensuring that all staff members are able to challenge contested decisions effectively and receive appropriate formal resolution of such claims within a reasonable time.

2. To avoid uncertainties, a clear rule needs to be established for handling cases that have already been submitted to review before 31 December 2008, for the purpose of ensuring an efficient review process that avoids, as much as feasible, the duplication of work performed by the different bodies under the old and the new system. Such a clear rule would also inform staff members of their rights and responsibilities in contesting an administrative decision; it should not, however, draw categorical distinctions between certain *types* of cases so as to avoid a perception of inequality. The decision as to whether a matter that arises before 31 December 2008 should be transferred to the new system should therefore depend on the actual *stage* that the review process initiated by the staff member has reached.

3. To achieve that goal, several options ought to be considered:

Option 1. Article 2, paragraph 7, on transitional measures as proposed by the Secretariat would allow the **Joint Appeals Boards and the Joint Disciplinary Committees and the current United Nations Administrative Tribunal to transfer cases pending before them to the new United Nations Dispute Tribunal after 1 January 2009**, the date at which the new formal system will come into existence. As the Dispute Tribunal does not have any conditions attached to it and does not place any restrictions on the possibility for transfer, the Boards, Committees and United Nations Administrative Tribunal could — consonant with

[a] On the measures to address the backlog, see paragraphs 9 and 10 of the report of the Secretary-General contained in document A/63/314.

the decision by the General Assembly to discontinue the old system on 31 December 2008 — **transfer all cases pending before them to the new system**.

While the **advantage** of this solution would be to allow for a clear cut between the two systems, the **disadvantage** would be that — if the number of "old" cases transferred to the new system is large — the new Dispute Tribunal would be confronted with a high number of unresolved cases "as of day one" of its operation, which may clog the system from the very outset.

Option 2. According to another proposal, **after 1 January 2009** all claims shall be submitted under the new system **except those already "pending action before the United Nations Administrative Tribunal or the Joint Appeals Boards and Joint Disciplinary Committees as of 31 December 2008"**. This would open the jurisdiction of the Dispute Tribunal for cases arising after 1 January 2009, whereas all cases which at that date are already "pending action" before the United Nations Administrative Tribunal or the Boards and Committees would be excluded from the jurisdiction of the Dispute Tribunal and would have to be concluded under the old system. As a consequence, the system of Joint Appeals Boards, Joint Disciplinary Committees and the United Nations Administrative Tribunal would need to exist beyond 31 December 2008 for the time needed by them to conclude their work on those "pending" cases.

4. Which cases exactly would still have to be concluded under the old system, however, depends on how the term "pending action before the Joint Appeals Boards and Joint Disciplinary Committees or the United Nations Administrative Tribunal" is being defined. This term can **refer to very different stages of the proceedings** before those bodies. So, here again, a **number of options** come into play, each of which leads to a different number of cases to be continued under the old system while forwarding the remaining cases as of 1 January 2009 to the new system, as follows:

Option (a): pending = filing of a case

Under this option, a case should continue to be processed under the old system once a **complaint has been filed before a Joint Appeals Board, a Joint Disciplinary Committee or the United Nations Administrative Tribunal**, the argument being that after a case has been formally submitted to one of the existing bodies, that body should conduct and conclude the proceedings as provided for in the current system. The disadvantage is that probably a large number of cases would need to be completed under the old system long into 2009 or even beyond.

Option (b): pending = a Joint Appeals Board or a Joint Disciplinary Committee has been formed

Under this option, a case should continue to be processed under the old system **if the respective Joint Appeals Board or Joint Disciplinary Committee has already been constituted at the request of the applicant**, the argument being that at this point at least some preparatory effort — selection of the persons to serve on the respective Board or Committee — has already been invested in the case so that that body should actually take up and conclude its work on the case.

Option (c): pending = a Joint Appeals Board or a Joint Disciplinary Committee has started to work on the case

Under this option, a case should continue under the old system only if the respective **body has actually started its work**, the argument being that there will always be some lapse of time between the formation of the Joint Appeals Board or Joint Disciplinary Committee and the date when the respective body will take up consideration of the case. If the Board or Committee has been established but has not yet started to work on the case, the case could still be resubmitted under the new system without causing too much duplication of work.

Option (d): pending = pleadings phase has been concluded

Under this option, a case should stay in the old system once the respective body has **concluded the "pleadings" phase**, i.e. after all documents have been submitted, oral hearings have been held and presentations have been made. A case that has reached this advanced stage of deliberation should no longer be transferred out of the system, the argument being that requiring the new Dispute Tribunal to "rehear" all of this and to start at the beginning would be a duplication of work and a waste of resources and would not be in the interest of justice.

Option (e): pending = any stage of the proceedings before the decision of a Joint Appeals Board or Joint Disciplinary Committee is rendered

If it were decided that it is the decision or recommendation by the Joint Appeals Board, Joint Disciplinary Committee or United Nations Administrative Tribunal that counts, a case could still be forwarded to the new system **as long as the respective body has not actually rendered its decision**. The disadvantage of this option would be that almost all of the substantive work of the Board, Committee or Administrative Tribunal would have to be repeated by the new Dispute Tribunal or Appeals Tribunal.

Appendix II

Scope *ratione personae* of the new system (article 3, paragraph 1 (d), of the draft statute of the United Nations Dispute Tribunal)

Options for further consideration by the Fifth Committee

Option 1

Set up the United Nations Dispute Tribunal for United Nations staff as currently covered by the system (article 3, paragraph 1 (a) to (c) of the draft statute) as of 1 January 2009 and establish, for all other categories proposed by the Secretary-General or Member States, a mechanism of the General Assembly for further work (step-by-step approach), which could be:

Option (a): the working group of the Sixth Committee on the Administration of Justice at the United Nations;

Option (b): an Ad Hoc Committee

to take up work:

Option (c): during the sixty-third session of the General Assembly;

Option (d): at the sixty-fourth session or after, once the United Nations Dispute Tribunal is up and running and experience has been gained,

with a mandate to assess the means available to other persons working for the United Nations and to look into possibilities to improve the remedies available to them through:

Option (e): as a first step, alternative or informal mechanisms;

Option (f): alternative or informal mechanisms and, provided that the body established under options (a) or (b) above concludes that these are insufficient, inclusion in the formal system;

Option (g): alternative mechanisms, as well as the inclusion of any of the additional categories proposed by the Secretary-General or Member States under the new formal system,

based on:

Option (h): the information contained in the note by the Secretary-General;

Option (i): an additional report of the Secretary-General to be requested on possible ways to improve their means of addressing grievances through informal mechanisms.

Option 2

Set up the United Nations Dispute Tribunal for United Nations staff and other categories of non-staff personnel mentioned in paragraph 1 (d) of article 3 of the draft statute and for those proposed by delegations, bearing in mind the following positions expressed by different delegations:

Option (a): Accept article 3, paragraph 1 (d) as is;

Option (b): Accept the types of persons mentioned in the chapeau of article 3, paragraph 1 (d), but include also the categories mentioned in article 3, paragraph 1 (d) (ii) to (iv), i.e. volunteers (other than United Nations Volunteers), interns and type II gratis personnel, in the scope of the new system;

Option (c): Further improvement of redress for non-staff needs to be considered: to be decided later;

Option (d): Replace the categories listed in article 3, paragraph 1 (d) by:

- officials other than staff of the Secretariat;
- experts on mission who do not serve under a contract as a consultant or individual contractors;

Option (e): No extension of the current scope of the new system beyond the personnel listed in article 3, paragraph 1 (a) to (c) now, with continuation of the debate at a later stage (see above, option 1), once the new system is up and running and sufficient experience has been gained.

Option 3

As a first step, the new formal system of administration of justice as of 1 January 2009 shall, as a minimum, apply to the persons covered by the present system, which are listed in article 3, paragraph 1 (a) to (c) of the draft statute of the United Nations Dispute Tribunal.

As a next step, the Working Group of the Sixth Committee on the Administration of Justice to be established during the sixty-third session of the General Assembly shall continue to discuss other legal aspects of the administration of justice at the United Nations with a view to ensuring that effective remedies are available to all other categories of United Nations personnel and to consider the types of recourse that are the most appropriate to that end.

Enclosure 2

Draft statute of the United Nations Appeals Tribunal

Text proposed by the Working Group on the Administration of Justice at the United Nations

Article 1

A tribunal is established by the present statute as the second instance of the two-tier formal system of administration of justice, to be known as the United Nations Appeals Tribunal.

Article 2

1. The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

(a) Exceeded its jurisdiction or competence;

(b) Failed to exercise jurisdiction vested in it;

(c) Erred on a question of law;

(d) Committed an error in procedure, such as to affect the decision of the case; or

(e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

2. An appeal may be filed by either party (i.e. the applicant, or a person making claims in the name of an incapacitated or deceased applicant, or the respondent) to a judgement of the Dispute Tribunal.

3. The Appeals Tribunal may affirm, reverse, modify or remand the judgement of the Dispute Tribunal. It may also issue all orders necessary or appropriate in aid of its jurisdiction and consonant with this statute.

4. In cases of appeal under article 2, paragraph 1 (e), the Appeals Tribunal shall be competent to:

(a) Affirm, reverse or modify findings of fact of the Dispute Tribunal on the basis of substantial evidence in the written record; or

(b) Remand the case to the Dispute Tribunal for additional factual findings, subject to article 2, paragraph 5, if it determines that further findings of fact are necessary.

5. In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings. Where this is not the case, or where the Appeals Tribunal determines that a decision cannot be taken without oral testimony or other forms of non-written evidence, it shall remand the case to the Dispute Tribunal. The evidence under this paragraph shall not include evidence that was known to either party and should have been presented at the level of the Dispute Tribunal.

6. Where the Appeals Tribunal remands a case to the Dispute Tribunal, it may order that the case be considered by a different judge of the Dispute Tribunal.

7. For the purposes of this article, "written record" means anything that has been entered in the formal record of the Dispute Tribunal including submissions, evidence, testimony, motions, objections, rulings and the judgement, and any evidence received in accordance with article 2, paragraph 5, of the present statute.

8. In the event of a dispute as to whether the Appeals Tribunal has competence under the present statute, the Tribunal shall decide on the matter.

[9. The Appeals Tribunal shall be competent to hear and pass judgement on an application alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund arising out of the decision of the United Nations Joint Staff Pension Board submitted by:

(a) Any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Appeals Tribunal in Pension Fund cases who is eligible under article 21 of the regulations of the Fund as a participant in the Fund, even if his or her employment has ceased, and any person who has acceded to such staff member's rights upon his or her death;

(b) Any other person who can show that he or she is entitled to rights under the regulations of the Pension Fund by virtue of the participation in the Fund of a staff member of such member organization.[1]

10. The Appeals Tribunal shall be competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to accept the terms of the Appeals Tribunal's jurisdiction, consonant with the present statute. Such special agreement shall provide that the agency, organization or entity concerned shall be bound by the judgements of the Appeals Tribunal and be responsible for the payment of any compensation awarded by the Appeals Tribunal in respect of its own staff members and shall include, inter alia, provisions concerning its participation in the administrative arrangements for the functioning of the Appeals Tribunal and concerning its sharing of the expenses of the Appeals Tribunal.][1]

Article 3

1. The Appeals Tribunal shall be composed of seven judges.

2. The judges shall be elected by the General Assembly on the recommendation of the Internal Justice Council in accordance with General Assembly resolution

[1] It was proposed that applications alleging non-observance of the regulations of the Pension Fund and applications filed against a specialized agency should be considered by the Dispute Tribunal. It is recommended that, before a decision is taken, the Secretariat be given an opportunity to assess the consequences of this proposal, in consultation with the entities concerned as appropriate.

62/228. No two judges shall be of the same nationality. Due regard shall be given to geographical distribution and gender balance.

3. To be eligible for appointment as a judge, a person shall:

(a) Be of high moral character; and

(b) Possess at least 15 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.

4. A judge of the Appeals Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, three of the judges initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Appeals Tribunal for a further non-renewable term of seven years. A current or former judge of the Dispute Tribunal shall not be eligible to serve in the Appeals Tribunal.

5. A judge of the Appeals Tribunal appointed to replace a judge whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed for one non-renewable term of seven years, provided that the unexpired term is less than three years.

[6. A judge of the Appeals Tribunal shall not be eligible for any appointment within the United Nations, except another judicial post.][2]

7. The Appeals Tribunal shall elect a President and two Vice-Presidents.

8. A judge of the Appeals Tribunal shall serve in his or her personal capacity and enjoy full independence.

9. A judge of the Appeals Tribunal who has, or appears to have, a conflict of interest shall recuse himself or herself from the case. Where a party requests such recusal, the decision shall be taken by the President of the Tribunal.

10. A judge of the Appeals Tribunal may only be removed by the General Assembly in case of misconduct or incapacity.

11. A judge of the Appeals Tribunal may resign, by notifying the General Assembly through the Secretary-General. The resignation shall take effect from the date of notification, unless the notice of resignation specifies a later date.

Article 4

1. The Appeals Tribunal shall perform its functions in New York. However, it may decide to hold sessions in Geneva or Nairobi as required by its caseload.

2. The Appeals Tribunal shall hold ordinary sessions at dates to be fixed by its rules, subject to the determination of the President that there is a sufficient number of cases to justify holding the session.

3. Extraordinary sessions may be convoked by the President, as required by the caseload.

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[2] A proposal was made for a former judge to be eligible, after a certain period, for a post for which the selection and election and/or appointment is the prerogative of the United Nations Secretary-General. However, there were differing views on how long that ineligibility period should be. See also article 4, paragraph 6, of the statute of the Dispute Tribunal.

Article 5

1. The Secretary-General shall make the administrative arrangements necessary for the functioning of the Appeals Tribunal, including provisions for the travel and related costs of staff whose physical presence before the Tribunal is deemed necessary by the Tribunal and for judges to travel as necessary to hold sessions in Geneva and Nairobi.

2. The Registry of the Appeals Tribunal shall be established in New York, consisting of a Registrar and such other staff as necessary.

3. The expenses of the Appeals Tribunal shall be borne by the United Nations.

4. Compensation ordered by the Appeals Tribunal shall be paid by the United Nations Secretariat or separately administered United Nations funds and programmes as applicable and appropriate, or by the specialized agency, organization or entity that has accepted the jurisdiction of the Appeals Tribunal.

Article 6

1. Subject to the provisions of the present statute, the Appeals Tribunal shall establish its own rules of procedure, which shall be subject to approval by the General Assembly.

2. The rules shall include provisions concerning:

(a) Election of the President and Vice-Presidents;

(b) Composition of the Tribunal for its sessions;

(c) Organization of work;

(d) Presentation of submissions and the procedure to be followed in respect thereto;

(e) Procedures for maintaining the confidentiality and inadmissibility of verbal or written statements made during the mediation process;

(f) Intervention by persons not party to the case whose rights may have been affected by the judgement of the Dispute Tribunal and whose rights might therefore also be affected by the judgement of the Appeals Tribunal;

(g) The filing of friend-of-court briefs, upon motion and with the permission of the Appeals Tribunal;

(h) Oral proceedings;

(i) Publication of judgements;

(j) Functions of the Registry;

(k) Procedure for the recusal of judges; and

(l) Other matters relating to the functioning of the Tribunal.

Article 7

1. An appeal shall be receivable if:

(a) The Appeals Tribunal is competent to hear and pass judgement on the appeal, pursuant to article 2, paragraph 1, of the present statute;

(b) The appellant is eligible to file the appeal, pursuant to article 2, paragraph 2, of the present statute; and

(c) The appeal is filed within forty-five days of the receipt of the judgement of the Dispute Tribunal or, where the Appeals Tribunal has decided to waive or suspend that deadline in accordance with paragraph 3 below, within the period specified by the Appeals Tribunal.

[2. For purposes of applications alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund arising out of a decision of the United Nations Joint Staff Pension Board, an application shall be receivable if filed within ninety days from the receipt of the Board's decision.][3]

3. The Appeals Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Appeals Tribunal shall not suspend or waive the deadlines for management evaluation.

4. Notwithstanding article 7, paragraph 3, an application shall not be receivable if it is filed more than one year after the judgement of the Dispute Tribunal.

5. The filing of appeals shall have the effect of suspending the execution of the judgement contested.

6. An appeal and other submissions shall be filed in any of the official languages of the United Nations.

Article 8

1. The Appeals Tribunal may order production of documents or such other evidence as it deems necessary, subject to article 2 of the present statute.

2. The Appeals Tribunal shall decide whether the personal appearance of the appellant or any other person is required at oral proceedings and the appropriate means to achieve that purpose.

3. The judges assigned to a case will determine whether to hold oral proceedings.

4. The oral proceedings of the Appeals Tribunal shall be held in public unless the Appeals Tribunal decides, at its own initiative or at the request of either party, that exceptional circumstances require the proceedings to be closed.

Article 9

1. The Appeals Tribunal may order one or more of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Appeals Tribunal shall also set an

[3] See article 2, paragraph 9, above and the note thereto.

amount of compensation that the respondent may elect to pay as an alternative to the recission of the contested administrative decision or specific performance ordered, subject to subparagraph (b);

[(b) Compensation;

(c) Interest; or

(d) Costs.][4]

[2. Where the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party.][5]

3. The Appeals Tribunal shall not award exemplary or punitive damages.

4. At any time during the proceedings, the Appeals Tribunal may order an interim measure to provide temporary relief to either party to prevent irreparable harm and to maintain consistency with the judgement of the Dispute Tribunal.

[5. Where the Appeals Tribunal decides to remand a case to the Dispute Tribunal pursuant to article 2, it may also decide to grant compensation for the procedural delay, which is not to exceed the equivalent of three months' net base salary.][6]

6. The Appeals Tribunal may refer appropriate cases to the Secretary-General or executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.

Article 10

1. Cases before the Appeals Tribunal shall normally be reviewed by a panel of three judges and shall be decided by a majority vote.

2. Where the President or any two judges sitting in a particular case consider that the case raises a significant question of law, at any time before judgement is rendered, the case may be referred for consideration by the whole Appeals Tribunal. Quorum in such cases shall be five judges.

3. The judgements of the Appeals Tribunal shall be issued in writing and shall state the reasons, facts and law on which they are based.

4. The deliberations of the Appeals Tribunal shall be confidential.

5. The judgements of the Appeals Tribunal shall be binding upon the parties.

6. The judgements of the Appeals Tribunal shall be final and without appeal, subject to the provisions of article 11 of the present statute.

7. The judgements of the Appeals Tribunal shall be drawn up in any of the official languages of the United Nations, in two originals, which shall be deposited in the archives of the United Nations.

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[4] See article 10, paragraph 5 (b), (c) and (d) of the statute of the Dispute Tribunal and the note thereto.

[5] See article 10, paragraph 6 of the statute of the Dispute Tribunal and note thereto.

[6] For consideration by the Fifth Committee.

8. A copy of the judgement shall be communicated to each party in the case. The applicant shall receive a copy in the language in which the appeal was submitted unless he or she requests a copy in another of the official languages of the United Nations.

9. The judgements of the Appeals Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal.

Article 11

1. Subject to article 2, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement.

2. Clerical or arithmetical mistakes, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Appeals Tribunal either on its own motion or on the application of any of the parties.

3. Either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of the judgement.

4. Where the judgement requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution of the judgement.

Article 12

The present statute may be amended by decision of the General Assembly.

United Nations A/C.5/63/10

General Assembly

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Fifth Committee
Agenda items 118 and 89

Programme budget for the biennium 2008-2009

General and complete disarmament

Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms

Programme budget implications of draft resolution A/C.1/63/L.39

Statement submitted by the Secretary-General in accordance with rule 153 of the rules of procedure of the General Assembly

I. Introduction

1. At its 22nd meeting, on 31 October 2008, the First Committee adopted draft resolution A/C.1/63/L.39, which is contained in the report of the First Committee to the General Assembly (A/63/389). The Committee had before it a statement of the programme budget implications of the draft resolution submitted by the Secretary-General in accordance with rule 153 of the rules of procedure of the General Assembly (A/C.1/63/L.59).

II. Requests contained in the draft resolution

2. Under the terms of operative paragraphs 3 to 6 of draft resolution A/C.1/63/L.39, the General Assembly would:

(a) Decide, in order to facilitate further consideration on the implementation of the relevant recommendation contained in paragraph 27 of the report of the Group of Governmental Experts (see A/63/334) on a step-by-step basis among all States Members of the United Nations, in an open and transparent manner, to establish an open-ended working group, to meet for up to six one-week sessions starting in 2009, of which the two sessions foreseen in 2009 would be held in New York from 2 to 6 March and from 13 to 17 July, respectively;

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(b) Also decide that the open-ended working group would hold a one-day organizational session in New York by 27 February 2009 in order to agree on the organizational arrangements connected with the open-ended working group, including the dates and venues for its future substantive sessions;

(c) Further decide that the open-ended working group would, during 2009, further consider those elements in the report of the Group of Governmental Experts where consensus could be developed for their inclusion in an eventual legally binding treaty on the import, export and transfer of conventional arms, which would provide a balance giving benefit to all, with the principles of the Charter of the United Nations and other existing international obligations at the centre of such considerations, and transmit an initial report from the open-ended working group to the General Assembly for consideration at its sixty-fourth session;

(d) Request the Secretary-General to transmit the replies of Member States (see A/62/278 (Parts I and II) and Add.1-4), and the report of the Group of Governmental Experts (see A/63/334) to the open-ended working group and to render the group all necessary assistance, including the provision of essential background information and relevant documents.

III. Relationship of the request to the programme of work for the biennium 2008-2009

3. The requests contained in operative paragraphs 3 to 6 of the draft resolution relate to: (a) programme 1, General Assembly and Economic and Social Council affairs and conference management; (b) programme 3, Disarmament; and (c) subprogramme 4, Support services, of programme 24, Management and support services, of the biennial programme plan and priorities for the period 2008-2009 (see A/61/6/Rev.1). They fall under section 2, General Assembly and Economic and Social Council affairs and conference management; section 4, Disarmament; and section 28D, Office of Central Support Services, of the programme budget for the biennium 2008-2009.

IV. Activities by which the requests would be implemented

4. Pursuant to operative paragraphs 3 to 6 of draft resolution A/C.1/63/L.39, the Office for Disarmament Affairs would provide the necessary substantive services to convene the one-day organizational session and the two one-week sessions of the open-ended working group planned for 2009, all of which will be held in New York.

5. It is understood that the open-ended working group would hold three sessions in 2009 in New York and four sessions in 2010-2011 at venues to be determined at the organizational session to be held before 27 February 2009. The specifics of the sessions are as follows:

(a) In 2009, an organizational session is to be held in New York in January/February 2009 for one day (total of 2 meetings);

(b) The first session is to be held in New York from 2 to 6 March 2009 (total of 10 meetings);

(c) The second session is to be held in New York from 13 to 17 July 2009 (total of 10 meetings);

(d) The third session, to be held in February/March 2010, the fourth session, to be held in June/July 2010 and the fifth session, to be held in February/March 2011 would have the same conference-servicing requirements. Each session would last for five working days (total of 10 meetings per session);

(e) The sixth session, to be held in June/July 2011, would have the same conference-servicing requirements as the third, fourth and fifth sessions (see paragraph (d) above), except for additional post-session documentation requirements, which would relate to the report of the open-ended working group to the General Assembly.

6. The venue for the four sessions in 2010-2011 has yet to be determined and will be discussed at the organizational session of the working group to be held no later than 27 February 2009. Should the venues be other than New York, this would constitute an exception to paragraph 4 of General Assembly resolution 40/243, by which the general principle is reaffirmed that, in drawing up the schedule of conferences and meetings, United Nations bodies shall plan to meet at their respective headquarters.

7. Pursuant to operative paragraph 5 of draft resolution A/C.1/63/L.39, the Office for Disarmament Affairs would transmit in 2009 an initial report from the open-ended working group to the General Assembly.

V. Modification of the programme of work of 2008-2009 and the biennial programme plan for 2010-2011

8. In order to reflect the provisions of the draft resolution, the narrative of section 4, Disarmament, of the programme budget for the biennium 2008-2009 (A/62/6 (Sect. 4) and Corr.1) would be modified to amend the outputs already approved in respect of conventional arms issues. Subject to the decision of the General Assembly at its sixty-third session, that narrative will be incorporated into a revised version of the programme of work of section 4 of the programme budget for the biennium 2008-2009. The following modifications would be required:

Paragraph 4.35

Under "(a) Servicing of intergovernmental and expert bodies (regular budget)", add:

> "(viii) An open-ended working group to further consider efforts within the United Nations to address the international trade in conventional arms: substantive servicing of the meetings of the group (22)".

Under "(a) (i) b. Parliamentary documentation", add the following to the existing paragraph:

> "initial report of the open-ended working group to further consider efforts within the United Nations to address the international trade in conventional arms (1)".

9. The relevant outputs pertaining to the third to sixth sessions of the open-ended working group would be reflected in the proposed programme budget for the biennium 2010-2011.

VI. Estimates of additional requirements

10. The substantive servicing of the open-ended working group in 2009 will be provided from within the existing capacity of the Office for Disarmament Affairs.

11. The establishment of the open-ended working group in 2009 would constitute an addition to the revised calendar of conferences and meetings for 2009 of one organizational and two substantive sessions of the open-ended working group.

12. The requirements for conference-servicing and other support services for the meetings of the open-ended working group in 2009 are estimated at $1,225,000 (at current rates), broken down as follows: $1,181,000 under section 2, General Assembly and Economic and Social Council affairs and conference management, and $44,000 under Section 28D, Office of Central Support Services.

13. Resources in the amount of $2,305,000 (at current rates) would also be required for conference-servicing and other support services for the four sessions of the open-ended working group to be organized in 2010-2011, broken down as follows: $2,225,000 under section 2, General Assembly and Economic and Social Council affairs and conference management, and $80,000 under section 28D, Office of Central Support Services.

VII. Potential for absorption and contingency fund

14. No provisions have been made under sections 2 and 28D of the programme budget for the biennium 2008-2009 for servicing the meetings of the open-ended working group in 2009.

15. It will be recalled that, under the procedures established by the General Assembly in its resolutions 41/213 and 42/211, a contingency fund is established for each biennium to accommodate additional expenditure derived from legislative mandates not provided for in the programme budget. Under this procedure, if additional expenditures were proposed that exceeded the resources available from the contingency fund, the activities concerned would be implemented only through the redeployment of resources from low-priority areas or the modification of existing activities. Otherwise, such additional activities would have to be deferred to a later biennium.

16. The Secretariat has sought to identify areas from which resources can be redeployed to meet the additional requirements relating to the conference-servicing and other support services referred to in paragraph 12 above. While every effort will be made to accommodate the conference-servicing ($1,181,000) and support services ($44,000) requirements from within the existing capacity of the Secretariat under budget sections 2 and 28D, it will be possible to determine the extent of that accommodation only in the light of a consolidated statement on the contingency fund reflecting the demand for additional services stemming from all statements of programme budget implications and revised estimates for the biennium 2008-2009. The Secretary-General will submit a consolidated statement to the General

Assembly towards the end of the main part of its sixty-third session, together with his proposals on the extent of utilization of the contingency fund for those additional requirements.

17. With regard to the requirements for conference-servicing and support services related to the meetings of the open-ended working group in the biennium 2010-2011 ($2,305,000), those will be considered within the framework of the proposed programme budget for the biennium 2010-2011, subject to decisions of the Committee on Conferences to include those meetings in the programme of conferences and meetings of the United Nations for that biennium.

VIII. Summary

18. **Accordingly, should the General Assembly adopt the draft resolution contained in the report of the First Committee to the Assembly (A/63/389), there would be additional resource requirements for the biennium 2008-2009 totalling $1,225,000, including under section 2, General Assembly and Economic and Social Council affairs and conference management ($1,181,000), and section 28D, Office of Central Support Services ($44,000), of the programme budget for the biennium 2008-2009. The extent to which those costs would require an additional appropriation for the biennium 2008-2009 will be determined in the context of the consolidated statement of all programme budget implications and revised estimates for the biennium 2008-2009 to be submitted to the Assembly towards the end of the main part of its sixty-third session, together with proposals on the utilization of the contingency fund for the additional requirements.**

19. **The General Assembly would also be required to approve the proposed modification to the outputs to be incorporated into the programme of work of section 4, Disarmament, of the programme budget for the biennium 2008-2009 under subprogramme 3, Conventional arms (including practical disarmament measures).**

20. **The additional requirements for the biennium 2010-2011 would be considered in the context of the proposed programme budget for that biennium.**

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Programme budget for the biennium 2008-2009

Follow-up to the outcome of the Millennium Summit

The world financial and economic crisis and its consequences

Programme budget implications of draft resolution A/63/L.22/Rev.1

Statement submitted by the Secretary-General in accordance with rule 153 of the rules of procedure of the General Assembly

I. Requests contained in the draft resolution

1. In operative paragraphs 1, 2, 3 and 4 of draft resolution A/63/L.22/Rev.1, entitled "The world financial and economic crisis and its consequences", the General Assembly would:

(a) Decide to convene a United Nations Summit during the sixty-third session of the General Assembly in order to examine the underlying causes of the financial crisis and undertake a comprehensive review of the international financial system with a view to advancing efforts to reform the Bretton Woods institutions, on the basis of equity, inclusiveness, democracy and a development-oriented vision that reflects the interests of all Member States;

(b) Request the President of the General Assembly, in close consultations with Member States, as well as other relevant international and regional institutions, civil society, the private sector and other stakeholders, to carry out all the organizational arrangements for the United Nations Summit, according to the rules of procedure of the General Assembly;

(c) Invite the Economic and Social Council to convene a high-level meeting to examine the current financial crisis and present its recommendations to the General Assembly, as part of the preparatory process for the United Nations Summit;

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(d) Request the Secretary-General and invite all relevant organizations and specialized agencies of the United Nations to take all appropriate measures, according to their respective mandates, to implement the present resolution.

II. Financial implications of the proposals

2. At this time, there are insufficient details regarding the modalities of the Summit and the high-level meeting to determine the full range of programme budget implications arising from the draft resolution. The proposals would require further study and as such, only preliminary financial implications can be provided in this regard.

3. Should the General Assembly adopt the draft resolution, no additional conference-servicing resources would be required, on the understanding that the aforementioned United Nations Summit and the high-level meeting of the Economic and Social Council would be part of the regular work programme of the General Assembly and the Economic and Social Council and, therefore, utilize meeting and documentation resources that have already been planned and budgeted for according to their entitlements.

4. Therefore, any additional conference-servicing requirements for related parallel meetings, round tables, panels and civil society hearings/dialogues would have to be reviewed, evaluated and their financial implications established at the time the format and modalities of the Summit and the high-level meeting are made clear, after close consultations with Member States regarding relevant organizational arrangements.

5. As regards the substantive work requirements, the current draft resolution does not provide adequate details that would allow the determination of the precise scope of the preparatory process for these meetings.

III. Summary

6. **Implementation of the proposals would give rise to additional resource requirements in the current biennium 2008-2009. However, in the absence of sufficient details at this stage regarding the Summit and the high-level meeting, it is difficult for the Secretariat to determine the full extent of the programme budget implications arising from this draft resolution.**

7. **Should the General Assembly adopt the draft resolution, a detailed statement of programme budget implications would be submitted to the Assembly for its consideration during its current session as soon as specific information on the format and modalities of the Summit and the high-level meeting is available.**

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Programme budget for the biennium 2008-2009

Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Myanmar

Programme budget implications of draft resolution A/C.3/63/L.33

Statement submitted by the Secretary-General in accordance with rule 153 of the rules of procedure of the General Assembly

I. Introduction

1. At its 45th meeting, on 21 November 2008, the Third Committee adopted draft resolution A/C.3/63/L.33 on the situation of human rights in Myanmar. The Committee was informed of the programme budget implications of the draft resolution in a statement submitted by the Secretary-General (A/C.3/63/L.71).

II. Requests contained in the draft resolution

2. Under the terms of operative paragraph 6 of draft resolution A/C.3/63/L.33, the General Assembly would request the Secretary-General:

(a) To continue to provide his good offices and to pursue his discussions on the situation of human rights, the transition to democracy and the national reconciliation process with the Government and the people of Myanmar, including democracy and human rights groups and all relevant parties, and to offer technical assistance to the Government in that regard;

(b) To give all necessary assistance to enable his Special Adviser and the Special Rapporteur on the situation of human rights in Myanmar to discharge their mandates fully and effectively and in a coordinated manner;

08-62461 (E) 021208

(c) To report to the General Assembly at its sixty-fourth session as well as to the Human Rights Council on the progress made in the implementation of that resolution.

III. Relationship of the proposed requests to the biennial programme plan and priorities for the period 2008-2009

3. The foregoing requests relate to subprogramme 1, Prevention, control and resolution of conflicts, of programme 2, Political affairs, and subprogramme 3, Advisory services, technical cooperation and field activities, and subprogramme 4, Support for human rights thematic fact-finding procedures, of programme 19, Human rights, of the biennial programme plan and priorities for the period 2008-2009 (A/61/6/Rev. 1).

IV. Activities by which the requests would be implemented

4. In his report to the General Assembly (A/63/356), the Secretary-General indicated that further efforts had been made to engage the authorities of Myanmar, opposition groups and domestic stakeholders, as well as key interested Member States, in support of his good offices mission. In this engagement, the role of the United Nations is to ascertain the positions of all parties and facilitate their efforts to work together through dialogue towards a mutually acceptable process of national reconciliation and democratization. Following the official announcement of the adoption of a new Constitution, the Government of Myanmar has expressed its determination to proceed with multiparty elections by 2010, the fifth step in its seven-step road map. The Secretary-General and his Special Adviser have consistently emphasized that only a credible and inclusive political process based on mutual understanding and compromise by all stakeholders can help to advance the prospects of durable peace, national reconciliation, democracy and respect for human rights in Myanmar.

5. The Secretary-General welcomes the stated commitment of the Government of Myanmar to cooperate with his good offices in the implementation of relevant General Assembly resolutions. In that context, he urges the Government of Myanmar to take meaningful steps with tangible results in response to the concerns and expectations of the United Nations and the international community in the context of the good offices process, in particular with regard to the release of political prisoners and meaningful dialogue with all relevant stakeholders.

6. The Secretary-General is thus committed to making every effort to steer Myanmar towards national reconciliation, the transition to democracy and full respect for human rights as the necessary foundations for long-term stability and prosperity. He welcomes the constructive role played by the neighbours of Myanmar and by the members of the Association of Southeast Asian Nations, and encourages the continuation of such efforts.

7. Consistent with the requests contained in operative paragraph 6 of draft resolution A/C.3/63/L.33, the efforts of the good offices of the Secretary-General would be continued in 2009, in pursuit of his discussions on the situation of human rights and the restoration of democracy with the Government and the people of Myanmar, as well as all relevant parties to the national reconciliation process. The

efforts of his good offices would be carried out through his Special Adviser and his team. The progress made in the implementation of the resolution would be reported to the General Assembly at its sixty-fourth session.

V. Estimated resource requirements

8. The estimated costs of continuing the efforts of the good offices of the Secretary-General to facilitate the process of national reconciliation and democratization through his Special Adviser for Myanmar, as requested in paragraph 6 (a), (b) and (c) of draft resolution A/C.3/63/L.33, for a one-year period, from 1 January to 31 December 2009, amount to $753,200 net ($837,700 gross).

9. These resources would cover the salaries for the Special Adviser and two support staff (1 P-4 and 1 General Service (Other level)); the official travel of the Special Adviser to Myanmar, neighbouring countries in the region, Europe and North America; and miscellaneous services in support of his mission. Other substantive and administrative support to the Special Adviser would be provided by the Department of Political Affairs of the United Nations Secretariat.

10. With regard to the request contained in the last part of operative paragraph 6 (a), concerning technical assistance, such assistance, if requested, would be accommodated within the technical cooperation activities of the Office of the United Nations High Commissioner for Human Rights. As to the request contained in operative paragraph 6 (b), pertaining to the Special Rapporteur, the Secretary-General in his statement of programme budget implications (see A/HRC/7/78, part two, annex II) had informed the Human Rights Council, prior to its adoption of resolution 7/32 (A/63/53, chap. II, sect. A), that the estimated requirements of $72,200 per annum or $144,400 per biennium required to implement the activities of the Special Rapporteur would be provided under section 23, Human rights, of the programme budget for the biennium 2008-2009 (A/62/6/Add.1). The Secretary-General would also inform the General Assembly of these estimated requirements in his report on the revised estimates resulting from resolutions and decisions adopted by the Council at its seventh and eighth sessions, in 2008.

11. No additional resources are requested under section 23, Human rights, at this juncture.

VI. Summary

12. **Should the General Assembly adopt draft resolution A/C.3/63/L.33, additional requirements amounting to $753,200 net ($837,700 gross) would be required for the period from 1 January to 31 December 2009, under section 3, Political affairs, of the programme budget for the biennium 2008-2009, for the continuation of the efforts of the good offices of the Secretary-General relating to the situation in Myanmar. Appropriations for these requirements would be sought in the context of the report of the Secretary-General on estimates in respect of special political mission, good offices and other political initiatives authorized by the Assembly and/or the Security Council (A/63/346/Add.1 and Corr.1) that is being submitted to the Assembly during its current session.**

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Programme budget for the biennium 2008-2009

Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Committee on the Rights of the Child

Programme budget implications of draft resolution A/C.3/63/L.46/Rev.1 (as orally revised)

Statement submitted by the Secretary-General in accordance with rule 153 of the rules of procedure of the General Assembly

I. Introduction

1. At its 48th meeting, on 25 November 2008, the Third Committee adopted draft resolution A/C.3/63/L.46/Rev.1 (as orally revised) by consensus. The Committee had before it a statement of programme budget implications contained in document A/C.3/63/L.61. The Secretariat informed the Committee at the time of adoption of the draft resolution that it reserved the right to amend the statement of programme budget implications in line with the oral revisions to the draft resolution.

II. Requests contained in the draft resolution

2. Under the terms of operative paragraphs 1 and 2 of draft resolution A/C.3/63/L.46/Rev.1 (as orally revised), the General Assembly would:

(a) Note, while welcoming the entry into force of the Optional Protocols to the Convention on the Rights of the Child, that there is a backlog of more than 80 reports related to the submission by States parties of their initial reports under the Optional Protocols in conformity with their obligations, note with concern that if the backlog is not addressed, it will impede the ability of the Committee to consider reports in a timely manner and take note in this regard of the request of the Committee to meet in parallel chambers to address the backlog in an effective and timely manner;

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(b) Decide, as an exceptional and temporary measure, to authorize the Committee to meet in parallel chambers, of nine members each, for 10 working days during each of its three regular sessions and for five working days during the weeks of its pre-sessional meetings between October 2009 and October 2010.

III. Relationship of the requests to the programme of work for the biennium 2008-2009

3. The requests relate to programme 1, General Assembly and Economic and Social Council affairs and conference management; subprogramme 2, Supporting human rights bodies and organs, of programme 19, Human rights; and subprogramme 4, Support services, of programme 24, Management and support services, of the biennial programme plan for the period 2008-2009. They also fall under section 2, General Assembly and Economic and Social Council affairs and conference management; section 23, Human rights; and section 28E, Administration, Geneva, of the programme budget for the biennium 2008-2009.

IV. Activities by which the requests would be implemented and additional requirements

4. Should draft resolution A/C.3/63/L.46/Rev.1 (as orally revised) be adopted by the General Assembly, additional meeting requirements would arise pursuant to operative paragraphs 2 and 3 to provide for 10 additional pre-sessional working group meetings in 2009; 60 additional sessional meetings in parallel chambers with the three regular sessions of the Committee planned in 2010; and 30 additional pre-sessional working group meetings in parallel chambers with the three pre-sessional meetings planned in 2010.

5. The additional meetings of the Committee would require interpretation services in three (or exceptionally four) official languages. Summary records would be provided for the 60 additional sessional meetings of the Committee; no summary records would be required for the 40 pre-sessional meetings. An additional 2,520 pages of pre-session and 936 pages of post-sessional documentation in three (or exceptionally four) official languages would also be required for the additional meetings.

6. Additional requirements are not expected to arise for the travel and per diem costs of members of the Committee in relation to the additional meetings.

7. Additional requirements would arise in relation to conference-servicing requirements and additional staffing requirements to provide for general temporary assistance estimated as follows: two staff at the P-3 level for 6 work-months each in 2009 (from July 2009), and for 12 work-months each in 2010; and one General Service level assistant for 6 work-months in 2009 and 12 work-months in 2010.

8. The adoption of draft resolution A/C.3/63/L.46/Rev.1 (as orally revised) would also result in an addition to the revised calendar of conferences and meetings for 2009 so that the meetings of the Committee on the Rights of the Child and its working group could be held in parallel chambers.

9. The requirements for the additional meetings of the Committee and its working group referred to in paragraphs 4 through 6 above are summarized in the following table. In line with the oral revisions to the draft resolution at the time of its adoption by the Third Committee the estimates in the statement of programme budget implications presented to the Committee have been revised to exclude the requirements for 2011 since the terms of the draft resolution do not provide for meetings in 2011.

Summary of overall estimated requirements

(United States dollars)

Budget section	*2009*	*2010*
2. General Assembly and Economic and Social Council affairs and conference management: meeting servicing, interpretation and documentation	513 100	3 162 000
23. Human rights: staff costs (net)	208 300	416 600
28E. Administration, Geneva: support services	3 800	34 200
35. Staff assessment	33 800	67 600
Income section 1, Income from staff assessment	(33 800)	(67 600)
Total	**725 200**	**3 612 800**

V. Modification of the programme of work for 2008-2009

10. Should the draft resolution be adopted, modifications would be required in the programme of work under subprogramme 2, Supporting human rights bodies and organs, of section 23, Human rights, of the programme budget for the biennium 2008-2009, to amend the outputs already approved in respect of the substantive servicing of the pre-sessional working group of the Committee on the Rights of the Child. The modifications required would be as follows: in paragraph 23.66 (a) (xiii) the words "pre-sessional working group meetings (60)" would be replaced by the words "pre-sessional working group meetings (70)".

11. The relevant outputs pertaining to the sessions and pre-sessional meetings of the Committee on the Rights to the Child would be reflected in the proposed programme budget for the biennium 2010-2011.

VI. Potential for absorption and the contingency fund

12. No provisions have been made under sections 2, 23 and 28E of the programme budget for the biennium 2008-2009 for the provision of substantive support to and servicing of additional pre-sessional meetings of the working group of the Committee on the Rights of the Child proposed in 2009.

13. It will be recalled that, under the procedures established by the General Assembly in its resolutions 41/213 and 42/211, a contingency fund is established for each biennium to accommodate additional expenditures derived from legislative

mandates not provided for in the programme budget. Under this procedure, if additional expenditures are proposed that exceed the resources available from the contingency fund, the activities concerned would be implemented only through the redeployment of resources from low-priority areas or the modification of existing activities. Otherwise, such additional activities would have to be deferred to a later biennium.

14. The Secretariat has sought to identify areas from which resources could be redeployed to meet the additional requirements relating to the substantive support to the Committee and the conference-servicing and other support services requirements referred to in paragraph 9 above. It is considered that additional requirements could be absorbed within the provisions under section 23, Human rights ($208,300), and section 28E, Administration, Geneva ($3,800), of the programme budget for the biennium 2008-2009. Concerning the estimated additional conference-servicing requirements of $513,100, while every effort will be made to accommodate those requirements from within the existing capacity of the Secretariat under section 2, General Assembly and Economic and Social Council affairs and conference management, the extent of such accommodation could be determined only in the light of the consolidated statement on the contingency fund reflecting the demand for the additional services stemming from all statements of programme budget implications and revised estimates for the biennium 2008-2009. The Secretary-General would submit the consolidated statement to the General Assembly towards the end of the main part of its sixty-third session together with his proposals on the extent of utilization of the contingency fund for those additional requirements.

15. With regard to the requirements for the provision of substantive support to the Committee, as well as costs for conference servicing and support services related to the meetings of the Committee and its working group in the biennium 2010-2011 ($3,612,800), they will be considered within the framework of the proposed programme budget for the biennium 2010-2011, as well as the programme of conferences and meetings of the United Nations for that biennium.

VII. Conclusion

16. **Should the General Assembly adopt draft resolution A/C.3/63/L.46/Rev.1 (as orally revised), there would be need for an additional appropriation for the biennium 2008-2009 under section 2, General Assembly and Economic and Social Council affairs and conference management, of the programme budget for the biennium 2008-2009 in the amount of $513,100. The extent to which an additional appropriation for the biennium 2008-2009 would be required will be determined in the context of the consolidated statement of all statements of programme budget implications and revised estimates for the biennium 2008-2009 to be submitted to the General Assembly towards the end of the main part of its sixty-third session together with proposals on the utilization of the contingency fund for those additional requirements.**

17. **In addition, the General Assembly would be required to approve the proposed modifications to the outputs to be incorporated into the programme of work of section 23, Human rights, of the programme budget for the biennium 2008-2009 under subprogramme 2, Supporting human rights bodies and organs.**

18. **The requirements of $3,612,800 for 2010-2011 will be dealt with in the context of the proposed programme budget for the biennium 2010-2011.**